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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7106 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KIRANKUMAR H RUPERELIA

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner
Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for
Respondent No. 1
MR PJ KANABAR for Respondent No. 2, 3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 14/06/2001

ORAL JUDGEMENT

The present petition is filed challenging the order dated 30.3.1999, passed by respondent no.2, District Development Officer, District Panchayat, Amreli, which is produced at Annexure 'F' to the petition, against which Revision Application No.64 of 1995 was filed before respondent no.1, which was rejected by order

dated 12.12.1995, Annexure 'A' to the petition.

2. The facts giving rise to the present petition are that the petitioner was initially appointed as Water Tax Recovery Clerk by an order dated 1.1.1980 of respondent no.3, Dhari Gram Panchayat. After completion of period of probation, the petitioner was confirmed in the post of Water Tax Recovery Clerk by an order dated 11.3.1991. It is the case of the petitioner that thereafter there was an advertisement for the post of Accountant in daily newspaper, Jansatta. Thereafter, having been interviewed before the General Body of Dhari Gram Panchayat on 25.2.1983, the petitioner was appointed by Resolution No.170, to the post of Accountant. In passage of time, Dhari Gram Panchayat came to be converted to Dhari Nagar Panchayat. Dhari Nagar Panchayat passed an order on 27.3.1987 on the basis of an order passed by the District Development Officer, District Panchayat, Amreli dated 26.3.1987, which is referred to in the aforesaid order, a copy of which is produced at Annexure 'E' to the petition, whereby the petitioner came to be reverted from the post of Accountant to the post of Clerk. Said reversion order was challenged by the present petitioner by filing Special Civil Application No.1229 of 1987. It is the case of the petitioner that initially the Court had granted status quo. But ultimately the petition came to be disposed of on the ground that the petitioner has an alternative remedy. The petitioner then filed appropriate proceedings before the Gujarat Civil Services Tribunal, but then said proceedings also came to be terminated as the Tribunal was of the opinion that the remedy of the petitioner is to approach the Development Commissioner.

3. The Development Commissioner considered Revision Application No.151 of 1989 filed by the present petitioner along with another Revision application No.128 of 1989 filed by one Shri G.G. Desai, who was appointed as Secretary of Dhari Nagar Panchayat. Said Revision Application was disposed of by an order dated 8.11.1990, wherein the Additional Development Commissioner has considered in detail the case of the petitioner in light of the provisions of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act"). The Additional Development Commissioner has recorded in terms that Dhari Nagar Panchayat is converted with effect from 1.4.1983 from Gram Panchayat and Dhari Gram Panchayat had only one post of Head Clerk-- cum-- Accountant, which was sanctioned at the relevant time by Director, Local Authorities, Northern Division, Ahmedabad by his order

bearing No.MUN/ AM/ 29/ 12 dated 12.4.1954. It is further recorded by the Additional development Commissioner that Dhari Nagar Panchayat did not have power under sec.102 of the Act to bifurcate the post of Head Clerk-- cum-- Accountant into two separate posts of 'Head Clerk' and 'Accountant'. As a natural corollary of that Dhari Nagar Panchayat did not have power to give appointment to the present petitioner to the post of Accountant. For ready perusal, provisions of sec.102 of the Act are reproduced hereunder :

"102. Secretary and servants of panchayats.

(1) Subject to the provisions of this Act and the rules made thereunder :-

(a) there shall be a Secretary for every gram panchayat and nagar panchayat who shall be appointed in accordance with the rules;

(b) a gram panchayat or, as the case may be, nagar panchayat shall have such other servants as may be determined under section 203. Such servants shall be appointed by such authority and their condition of service shall be such as may be prescribed:

Provided that the State Government having regard to the population of a gram and income of the panchayat thereof may direct in respect of a group of gram panchayats that such group shall have one Secretary and thereupon there shall be one Secretary for that group. . . ."

In clause (b) of subsec.(1) of sec.102 of the Act, it is provided that a gram panchayat or nagar panchayat shall have such other servants as may be determined under sec.203 of the Act. It is further provided in the said clause that such servants shall be appointed by such authority and their conditions of service shall be such as may be prescribed. The Additional Development Commissioner has considered the fact that Dhari Nagar Panchayat did not have power under sec.102 of the Act to bifurcate the post. Not only that educational qualifications were also not determined for the so called bifurcation and therefore, appointment given to the present petitioner on the said post was not in accordance with law.

4. The Additional Development Commissioner held that the order passed by the District Development Officer was

without any consultation with Dhari Nagar Panchayat; hence it is not in accordance with law. Therefore, the order of the District Development Officer dated 26.3.1987 was quashed and set aside and the matter was remanded to the District Development Officer to do the needful as per the provisions under sec.293(1) of the Act. The District Development Officer, having received the matter from the Additional Development Commissioner, has passed a fresh order on 30.3.1993, which is produced at Annexure 'F' to the present petition, wherein it is recorded in terms that the matter is considered as per the order dated 8.11.1990 of the Additional Development Commissioner. The order proceeds to record, in detail, that the Government (Panchayat, Housing & Urban Development Department) by its letter bearing No.NPM/ 1083/ 131/ K.1 dated 19.3.1983 had restrained the converted Nagar Panchayats from Gram Panchayats to create any new posts or to amend the pay scales or to fill in the vacant posts either by direct recruitment or by promotion. The order has also recorded that in view of the judgement of the Honourable Supreme Court, whereby the Gujarat Panchayats Act (3rd amendment) was quashed and set aside the provisions giving power to Gram/ Nagar Panchayats under sec.102 of the Act for recruitment and promotion had come to an end. The order has recorded further that Dhari Nagar Panchayat had only one post of "Accountant-cum-Head Clerk", which was sanctioned in the year 1954. The action of Dhari Nagar Panchayat of bifurcating the said post by Resolution No.162 dated 15.2.1983, that too without taking sanction under sec.293 of the Act, was not in accordance with law. It is also held that fixing of pay scale of Rs.425-800/-, and amending the requisite qualifications for the said post was only with a view to give benefit to particular person and therefore, the action was unconstitutional and contrary to the Government orders, resolutions and rules. Further, said action of Dhari Nagar Panchayat is adversely affecting the Panchayat Fund. The order has also noted that the said irregularity of erstwhile Dhari Gram Panchayat was noticed by the Assistant District Inspector of Local Funds and in paras 11, 11(2), 11(3) and 14 of the audit report, he had made notings for the same. The audit authorities had also advised the District Development Officer, District Panchayat, Amreli to see that the 'set up' of Dhari Gram/ Nagar Panchayat is made economical. Lastly, by order under challenge, the District Development Officer has ordered that the change made under Resolution No.162 dated 15.2.1983 is cancelled from that very date and Dhari Nagar Panchayat shall give promotion on the original post-- 'Accountant cum Head Clerk' in accordance with law.

5. It is stated by Mr.Kanabar, learned advocate appearing for the District Development Officer, District Panchayat, Amreli and Dhari Nagar Panchayat that against the above order, a revision application was filed before the State Government, which was also rejected. A copy of said order dated 12.12.1995 is produced at Annexure 'A' to the petition.

6. Learned advocate appearing for the petitioner could not point out anything whereby the impugned order can be said to be illegal and contrary to the provisions of law. He could not assail the said order. The contentions raised by learned advocate for the petitioner are without any substance and the same are rejected.

7. The impugned order does not call for any interference at the hands of this Court. In the result this petition fails. Dismissed accordingly. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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